

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDREW D. MACHLEID, et al.,

Plaintiffs,

v.

CITY OF ISSAQUAH, et al.,

Defendants.

CASE NO. C08-1629RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on Defendants' motion for summary judgment on Plaintiffs' remaining claims. Dkt. # 100. Plaintiffs did not request oral argument. For the reasons stated below, the court GRANTS the motion, DISMISSES this case, and directs the clerk to enter judgment for Defendants.

II. BACKGROUND & ANALYSIS

A. Procedural History

The court addressed the dispute between the parties at length in its June 4, 2010 order dismissing Plaintiffs' federal claims. To summarize, Plaintiffs Andrew and Wendy Machleid brought dozens of claims against the City of Issaquah and its public works director, Sheldon Lynne. All of those claims arose from the Machleids' attempt to develop a parcel of land they purchased in 2002 on Mount Quay Drive in Issaquah. In the course of developing that land for their home, Mr. Machleid committed criminal

1 violations of the Issaquah Municipal Code. He was convicted in Issaquah Municipal
2 Court in January 2009 and sentenced in May 2009. Mr. Machleid appealed his
3 conviction to King County Superior Court. In October 2010, that court affirmed Mr.
4 Machleid's convictions. He has now appealed to Division One of the Washington Court
5 of Appeals.

6 As this court ruled in June 2010, the preclusive effect of Mr. Machleid's
7 conviction doomed most of his claims here. After the June 2010 ruling, the only claims
8 remaining were the Machleids' Washington law claims for trespass, nuisance, and
9 negligence. All of those claims arose from the contention that Defendants were liable for
10 the discharge of drainage water onto the Machleid property.

11 The parties had attempted to address the drainage-related claims in the motions
12 that led to the June 2010 ruling. The court was disappointed with their efforts. The court
13 observed that the parties had submitted numerous reports from purported expert
14 witnesses, that they had disputes over whether those experts' testimony was properly
15 disclosed, and that they had largely failed to cite evidence specifically. The court ruled
16 that it could not resolve the drainage-related claims without receiving new briefing that
17 remedied these deficiencies. Dkt. # 96 at 12 ("In that [new] briefing, the parties will be
18 required to do a much better job pointing to specific evidence to support their
19 contentions. Both parties far too often fail to cite specific evidence supporting their
20 claims, relying instead on the court to hunt through the record.").

21 After determining that it would continue to exercise supplemental jurisdiction over
22 the drainage-related claims, the court ordered new briefing. Its instructions were specific.
23 The court ordered the Machleids and Defendants separately that when "they cite evidence
24 or other matters of record . . . they shall cite it with specificity, including citation to a
25 specific page or pages." Dkt. # 99 at 2. The court also set deadlines for the briefing,
26 requiring Defendants to submit a summary judgment motion no later than August 27,
27

1 2010, and requiring that the Machleids “oppose the motion for summary judgment in
2 accordance with the local rules.” *Id.*

3 The Machleids violated the court’s orders. First, they did not oppose the summary
4 judgment motion in accordance with the local rules. Defendants filed their summary
5 judgment motion on August 27, 2010, properly noting it for September 24, 2010, in
6 accordance with Local Rules W.D. Wash. CR 7(d)(3). Local Rule CR 7(d)(3) thus made
7 the Machleids’ opposition brief due no later than Monday, September 20, or (if they
8 chose to serve their opposition by mail) Friday, September 17. The Machleids ignored
9 these deadlines. On September 24, they still had not filed an opposition. Defendants
10 filed a reply brief noting the Machleids’ failure to file an opposition, and asking that their
11 motion be granted. On September 27, the Machleids filed their opposition brief. They
12 did not acknowledge that it was late. On October 5, the court renoted the summary
13 judgment motion, permitted Defendants to file a reply by October 8, and required the
14 Machleids to submit a statement explaining their late opposition and explaining why the
15 court should not deem Defendants motion to be unopposed. The Machleids ignored that
16 order. They have never explained their late filing.

17 Second, the Machleids’ opposition brief ignores the court’s requirement that they
18 cite all evidence with specificity, including citation to a specific page or pages. The
19 Machleids cite almost no page numbers. They cite numbered paragraphs within their
20 own declarations and their amended complaint with specificity, but otherwise they leave
21 it to the court to find the evidence to which they refer. They have submitted reports from
22 more than half a dozen engineers who have examined the property for one reason or
23 another over the past 15 years.¹ Those reports collectively total more than 200 pages.

24
25 ¹ The Machleids seek to rely on two of these engineers as their expert witnesses. They failed to
26 timely disclose those witnesses, and failed to make disclosures as required by Fed. R. Civ. P.
27 26(a)(2). The court could exclude evidence from them on this basis. Instead, in an effort to
28 consider the merits of the Machleids’ claims, the court has considered evidence from these
witnesses. None of it contradicts the conclusions that are essential to the court’s ruling today.

1 The Machleids do not cite a single one of those pages. They give the court no means to
2 sift through those reports to find relevant evidence.

3 **B. Factual Background for the Machleids' Drainage-Related Claims**

4 With that procedural history in mind, the court turns to the Machleids' drainage-
5 related Washington law claims. All of them center on the allegation that drainage water
6 discharging on their property is eroding the hillside surrounding their home. It is
7 undisputed that there are two public drainage easements on the Machleid property. Both
8 were created in 1994 as part of the short plat that the City approved that included the
9 Machleid property, several adjacent properties intended for residential use, and a tract to
10 the east that was designated as a native growth protection easement ("NGPE"). Mount
11 Quay Drive, which is atop manmade embankments, separates the tract with the NGPE
12 from the Machleid property and the other lots. The land generally slopes downward from
13 the tract on the east side of Mount Quay Drive across the Machleid property. Thus,
14 Mount Quay Drive presents a barrier to the natural downhill flow of both groundwater
15 and surface water. The 1994 short plat thus includes two drainage easements on the
16 Machleid property.

17 One easement, which the court will refer to as the "southern easement," extends
18 from Mount Quay Drive in a northwesterly path that crosses the northwest corner of the
19 property to the south of the Machleid property, and continues on to the Machleid
20 property, where it terminates in the southeast quadrant of the property. It appears that a
21 drainage culvert runs from the upland property to the east underneath Mount Quay Drive,
22 across the adjoining residential property, and terminating above ground within the
23 easement on the Machleid property. So far as the court is aware, the southern easement
24 plays no role in this litigation.

25 The other easement, which the court will refer to as the "northern easement,"
26 extends from Mount Quay Drive in a northwesterly path that completely crosses the
27 northeast quadrant of the Machleid property. It also has a drainage culvert running

1 through it that begins on the upland property to the east of Mount Quay Drive and travels
2 below the road. That culvert terminates above ground within the northern easement, just
3 south of the northern border of the Machleid property. So far as the record reflects, the
4 location of the terminus of the culvert has not changed since it was installed by the plat
5 developer in 1994. In the late 1990s, before the Machleids owned the property, a
6 landslide event damaged the western portion of Mount Quay Drive where it abuts the
7 eastern border of the Machleid property. The City constructed a soldier pile rock wall to
8 support the road along that border, and installed a new culvert running beneath Mount
9 Quay Drive, along with modifications to the drainage system on the east side of the road.
10 It appears that the City connected the new culvert to the existing culvert that terminates in
11 the northern easement. It is also possible that the City completely replaced the culvert
12 from Mount Quay Drive to its terminus on the northern easement.

13 From 1994 until present, water discharging from the culvert in the northern
14 easement has followed a path that is on the Machleid property, but extends outside the
15 northern easement. That path extends from the terminus of the drainage culvert to the
16 western border of the Machleid property, roughly parallel to the northern border of the
17 property. There is no dispute that the drainage apparatus (the culvert) is contained
18 entirely within the northern easement. There is also no dispute that water discharging
19 from the culvert has, since the creation of the easement, traveled across the Machleid
20 property beyond the easement.

21 **C. The Machleids' Drainage-Related Claims Fail As a Matter of Law.**

22 The Machleids would like to hold Defendants liable for the flow of water after it
23 leaves the culvert. The City sharply contests the assertion that water discharging from
24 the culvert is damaging the Machleid property. The court does not need to resolve that
25 dispute, however. The Machleids' claims fail for a more fundamental reason. The City
26 is under no legal obligation to do anything about groundwater discharged from the
27 culvert.

1 The Machleids claim that the water that discharges from the culvert intrudes onto
2 their property. They claim that the City has been negligent in allowing this discharge,
3 that the discharge exceeds or overburdens the easement (and thereby trespasses on their
4 property), and that the excessive discharge is a nuisance. These claims reflect the
5 Machleids' belief that the City has a duty to confine any water discharged in the
6 easement so that it does not migrate onto the Machleid property beyond the easement.
7 The Machleids provide no legal support for their belief.

8 Defendants' summary judgment motion requires the court to draw all inferences
9 from the admissible evidence² in the light most favorable to the Machleids. *Addisu v.*
10 *Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is
11 appropriate where there is no genuine issue of material fact and the moving party is
12 entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must
13 initially show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*,
14 477 U.S. 317, 323 (1986). The opposing party must then show a genuine issue of fact for
15 trial. *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The
16 opposing party must present probative evidence to support its claim or defense. *Intel*
17 *Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The
18 court defers to neither party in answering legal questions. *See Bendixen v. Standard Ins.*
19 *Co.*, 185 F.3d 939, 942 (9th Cir. 1999).

20 The Machleids' claim that Defendants' discharge of water is negligent. A
21 negligence claim requires them to demonstrate that the Defendants had a duty and
22 breached it. The Machleids fail to establish that the Defendants had any legal duty to
23 confine the water discharged within the drainage easement. They cite authority regarding
24 a city's obligation to maintain its own water systems – sewage or drainage systems – that
25 are designed to confine water. The drainage apparatus that is lawfully contained within

26 ² Although they do not cite the page numbers of the evidence they submit, the Machleids
27 frequently cite their amended complaint by paragraph number. The City correctly objects that
the amended complaint cannot serve as evidence to oppose a summary judgment motion.

1 the easements over the Machleid property is not designed to confine water. It is designed
2 to discharge water. From its very inception, it was designed to discharge water within the
3 easement and then allow that water to travel over the Machleid property beyond the
4 easement.³

5 Although it does not appear to be at issue in this litigation, the southern easement
6 is a better illustration of the Machleids' misunderstanding of the legal obligations
7 associated with the easement. Whereas the northern easement begins and ends at the
8 border of the Machleid property, the southern easement terminates in the middle of the
9 Machleid property. It was thus undisputedly understood that water discharging from that
10 easement would travel beyond the easement and onto the remainder of the Machleid
11 property. If the City (or anyone else) agreed to confine that water to a particular path,
12 there is no evidence of that agreement. The same is true of water flowing from the
13 northern easement.

14 There is evidence that both easements were designed with the intent that water
15 discharged from them would travel over the Machleid property in a way that mimicked
16 its path before the platting of the property. It appears that no one believed that this would
17 adversely affect the property. Perhaps they were mistaken. It appears that two engineers
18 that the Machleids hired believe that it was a bad idea to allow the drainage to discharge
19 in an uncontrolled manner. Perhaps they are right. But unless Defendants undertook the
20 legal obligation to control water leaving the easement, the Machleids' claims against
21 them must fail.

22 There is neither evidence nor legal authority for the proposition that the City or
23 Mr. Lynne were obliged to ensure that the water discharging from the easement followed
24 a particular path. There is no evidence that they had a legal obligation to address any
25 adverse effects of the flow of the water. Indeed, there is no indication that Mr. Lynne

26
27 ³ The City contends that it acquired a prescriptive easement over the path the drainage follows
after it leaves the easement. The court need not resolve that contention.

1 undertook any obligation whatsoever with respect to the Machleid property.⁴ The City
2 was obliged merely to confine any drainage apparatus within the easement. It has
3 fulfilled that obligation.

4 The same considerations are dispositive of the Machleids' claims for trespass. For
5 those claims to have merit, the Machleids would have to show that it was unlawful for
6 water leaving the easement to travel over their property. Again, they cite no authority for
7 that proposition. They would be hard pressed to do so, because the easement has never
8 delineated the permissible path of discharged water, it instead limits the location of the
9 physical apparatus of a drainage system that discharges water. There is no allegation that
10 the apparatus (the drainage culvert) exceeds the borders of the easement.

11 The Machleids' nuisance claim fares no better. Washington law defines nuisance:

12 Nuisance consists in unlawfully doing an act, or omitting to perform a duty,
13 which act or omission either annoys, injures or endangers the comfort,
14 repose, health or safety of others, offends decency, or unlawfully interferes
15 with, obstructs or tends to obstruct, or render dangerous for passage, any
16 lake or navigable river, bay, stream, canal or basin, or any public park,
square, street or highway; or in any way renders other persons insecure in
life, or in the use of property.

17 RCW § 7.48.120. As the definition suggests, the first obligation of a party claiming
18 nuisance is to point to an unlawful act or omitted duty. The Machleids thus have to
19 establish that it is unlawful to discharge water into an easement set aside for the discharge
20 of water. They have failed to do so. Alternatively, they have to establish that the City
21 has a duty to prevent water discharged within the easement from traveling beyond it.
22 Again, they fail to do so.

23 The Machleids' also contend that Defendants are liable for overburdening the
24 drainage easement. They contend that in the course of approving other developments on
25 nearby property, Defendants have increased the volume of water that flows through the

26 ⁴ The Machleids insist that Mr. Lynne, when visiting their property in response to their
27 complaints about drainage, undertook some obligation to them. The court finds no evidence that
28 Mr. Lynne made any assurances that would give rise to a duty to the Machleids.

1 easement. The court finds no evidentiary support for this claim. Putting that aside,
2 however, there is no evidence that the use of the easement itself has changed at all. So
3 far as the record reflects, the easement has always contained the same drainage culvert, or
4 at least a culvert of identical diameter. Even if the Machleids are correct that the volume
5 of water discharged has increased, the volume of the water has not overburdened the
6 easement, it has (at best) overburdened the path beyond the easement over which the
7 water travels. Defendants undertook no obligations with respect to this path.

8 Finally, the Machleids make various assertions that the City was aware of the
9 erosion problems caused by the outflow from the drainage easement, and failed to warn
10 the Machleids. There is certainly evidence that the City was aware of the problems.
11 There is also evidence that the Machleids were aware of the problems. What is missing,
12 however, is any authority that demonstrates that the City had an obligation to warn the
13 Machleids about the problems.

14 **D. The Machleids' Remaining Claims Should Also Be Dismissed As a Sanction**
15 **for Failure to Comply with Court Orders.**

16 The preceding analysis represents the court's best effort to sift through the
17 evidence the Machleids have submitted. The court has done so even though the
18 Machleids ignored its order to cite specific pages of evidence supporting their claims.
19 The court prefers to resolve matters on their merits, and it reaches its ruling today
20 because it concludes the Machleids cannot prevail on their drainage-related claims as a
21 matter of law.

22 The court also concludes, however, that the Machleids' remaining claims should
23 be dismissed as a sanction for failing to comply with court orders. The court provided
24 the Machleids with an additional opportunity to present their drainage-related claims. It
25 gave them specific instructions not only for citing evidence related to those claims, but
26 for the timing of that presentation. The Machleids did not comply with those
27 instructions. When the court ordered the Machleids to explain why their opposition brief


1 was untimely, they declined to do so. They did so even though Defendants asked the
2 court to grant their summary judgment motion as unopposed. They did so even though
3 this court's local rules permit it to consider a failure to respond to a motion as an
4 admission that the motion has merit. Local Rules W.D. Wash. CR 7(b)(2).

5 The court strongly prefers to resolve matters on their merits, and has attempted to
6 do so today. Where a plaintiff flaunts court orders in a manner that frustrates the court's
7 consideration of the merits of his or her claims, the court cannot reward that conduct.
8 Dismissal of the Machleids' remaining claims is an appropriate sanction, and an
9 independent alternate basis for the court's ruling today.

10 **III. CONCLUSION**

11 For the reasons stated above, the court GRANTS Defendants' motion for summary
12 judgment. Dkt. # 100. The court DISMISSES this case and directs the clerk to enter
13 judgment for Defendants.

14 DATED this 9th day of March, 2011.

15
16 

17 The Honorable Richard A. Jones
18 United States District Judge
19
20
21
22
23
24
25
26
27